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SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS

SUMMARY RECORD OF THE 12th MEETING

Held at Headquarters, New York,
on Thursday, 7 September 1978 at 10.30 a.m.

Chairman: Mr. CUEVAS CANCINO (Mexico)

CONTENTS

Consideration, pursuant to paragraph 2 of General Assembly resolution 32/150, of proposals and suggestions submitted by States (continued)

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The meeting was called to order at 11 a.m.

CONSIDERATION, PURSUANT TO PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/150, OF PROPOSALS AND SUGGESTIONS SUBMITTED BY STATES (continued) (A/AC.193/L.3)

1. Mr. ZEHENTNER (Federal Republic of Germany) said that it was gratifying to note the full agreement on the fact that safeguarding and maintaining international peace and security continued to be the overriding task of the United Nations. Prohibition of the use of force was essential for the maintenance of peace. It was in the interest of the community of States as a whole to reaffirm and strengthen that basic principle, which was contained in Article 2, paragraph 4, of the Charter. War and the threatened or actual use of force against States barred the road to reducing military confrontation through greater mutual confidence and to general and complete disarmament, to reducing the existing disparities between industrialized and developing countries and to implementing the right of peoples to self-determination.

2. For the Federal Republic of Germany in its special geographical situation at the border between the two power blocs, the principle of the non-use of force was of vital importance and formed a key element of foreign policy. Through that policy, his Government had made a significant contribution to preventing the threat or use of force in Europe.

3. While the aim of resolution 32/150 commanded general agreement in the Committee, the actual fulfilment of the Committee's mandate evoked widely divergent views. Given the complexity of the subject, that was not surprising. Yet, it would not absolve the Committee from the imperative though difficult task of trying to reach a consensus. Only on the basis of such a consensus, and not by a numerical majority, would it be possible to arrive at meaningful and workable solutions.

4. The prohibition of the use of force laid down in Article 2, paragraph 4, of the Charter constituted an injunction of unprecedented scope and unparalleled legal force. In past decades, however, there had been an alarming number of violations of that prohibition. Although the Charter had spared mankind a third world war, there were increasing outbreaks of limited war and innumerable cases of the threat and use of military and other force. The United Nations had proved unable to control or curb the accelerating arms race. The war potential of States was steadily increasing, and the threat to peace had never been so great. Irrespective of individual opinions on the draft Treaty submitted by the Soviet Union, his delegation hoped that the Soviet initiative would give rise to fruitful dialogue and produce the requisite results.

5. The task of the Committee must be to locate loop-holes, ambiguities and other short-comings in the provisions of Article 2, paragraph 4, of the Charter and identify ways of correcting them. Under Article 2, all Member States were committed to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner

(Mr. Zehentner, Federal Republic of Germany)

inconsistent with the purposes of the United Nations. It was the general view that that rule did not admit of any derogation.

6. Under Article 24 of the Charter, the Security Council was allowed a substantial amount of discretion in its task of maintaining international peace and security. The Charter provided no precise definition of such terms as "threat to peace", "breach of peace" or "act of aggression". The legal terms used in connexion with the prohibition of the use of force in Article 2, paragraph 4, also required interpretation; that was particularly true of the term "force", which obviously involved several different kinds of force apart from military force.

7. It had become evident that the principle of renunciation of force in international relations could not be considered without simultaneously taking into account the fundamental right of all States to self-defence, whether individual or collective. Article 51 of the Charter clearly recognized that inherent right, while being less clear on its substantive content. History had shown that the obligation of States under Article 2, paragraph 4, had been violated time and again. The continued arms race showed that States were preparing themselves for the use of arms in the future as well. In order to counter the dangers inherent in that situation in the interests of international peace and security, a credible alternative must be offered to the solution of problems by force. That need was recognized in the Charter, which raised States' commitment to the peaceful settlement of disputes to the rank of a basic principle. Yet, neither that commitment nor its procedural elements as stipulated in Chapter IV of the Charter had yet been fully implemented. The obligation of States to settle international disputes by peaceful means was the logical corollary of the prohibition of the use of force. Well-functioning mechanisms and institutions for the peaceful settlement of disputes were certain to create confidence and to facilitate the observance of the principle of the renunciation of force.

8. The Soviet Union had proposed that the Committee should draft a World Treaty on the Non-Use of Force in order to fulfil its mandate. His delegation respected the motives behind the Soviet proposal; however, there was considerable doubt in the Committee as to the appropriateness of that course, and the objectives and doubts of many delegations in that respect required careful consideration. It seemed a delicate undertaking for a binding convention to restrict itself wholly or in part to repeating the substantive content of basic rules and principles of the Charter. The prohibition of force contained in Article 2, paragraph 4, was not subject to the discretion of the parties. If the rule was made the subject of a convention, there was a danger that misunderstandings and misinterpretations would ensue. If Member States chose not to ratify such a convention or to qualify their accession by resorting to reservations or interpretative explanations, it was not clear whether the problems thus raised could be solved by the provisions of Article 103 of the Charter, according to which the obligations of Member States under the Charter prevailed over their obligations under other international agreements. Should the contents of a new treaty deviate from the Charter, however,

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(Mr. Zehentner, Federal Republic of Germany)

the resultant complications would run counter to the desired end. It would be impossible to prevent a conflict between two different sets of rules intended to apply to one and the same situation.

9. The Committee would also have to consider whether making the principle of the non-use of force the subject of a separate convention would not isolate it from the over-all legal context and structural setting of the Charter. Such a course seemed hazardous in view of the close interrelationship between the prohibition of the use of force and the remaining principles and procedures laid down in the Charter.

10. The legal form in which the development and codification of international law should take place had to be decided in each case after careful analysis. In the field of the non-use of force, the General Assembly had so far restricted itself to resolutions and declarations. A different approach had been chosen in the case of the International Covenants on Human Rights, but no immediate parallel could be drawn between the subject-matter of the Covenants and the principle of the non-use of force.

11. The search for reliable means of peacefully resolving both open and latent conflicts must continue. His delegation was convinced that the elimination of the use of force in international relations could best be achieved if such means were found. It would then be of secondary importance whether the non-use of force was reaffirmed in a treaty or in some other instrument.

12. Mr. PANCARCI (Turkey) said that his Government was firmly resolved to use all its efforts for the achievement of the goals of the United Nations and to support all serious initiatives which would promote the implementation of the principles of the Charter. In accordance with the traditionally pacifist policy which it had pursued since its establishment, the Republic of Turkey was against the unlawful use of force and had always sought to discourage aggressive tendencies. In the course of its history, it had concluded a number of bilateral and multilateral agreements under which it had undertaken not to resort to war as an instrument of national policy and to have no part in any act of aggression committed by a third State.

13. His country continued to pursue the same policies in the United Nations. It believed that the establishment and maintenance of a just and lasting peace depended as much on the elimination of poverty, ignorance and injustice as on the prohibition of the unlawful use of armed force. Turkey had also tried to play a constructive role at the Conference on Security and Co-operation in Europe, and Turkish judicial bodies had already begun to implement the Final Act of that Conference.

14. The task facing the Special Committee was extremely delicate, and success would depend on the active co-operation of its members. In that connexion, it was to be hoped that the Committee would avoid useless political polemics. It was too soon to say what the aim of its work should be.

(Mr. Pancarci, Turkey)

15. His delegation was opposed to the unlawful use or threat of force. If force was used exclusively to uphold the law, the resulting situation would be just and democractic. However, if the law was used in support of force, the result would be tyranny. In establishing a healthy and ordered international community, it was essential that force should be used to uphold the law and not to serve the interests of a State or group of States. If the principle of the non-use of unlawful force had not proved as effective as expected, it was not because of any short-comings in the United Nations Charter but because of the abnormal situation facing the international community, particularly the arms race and the continued existence of poverty, ignorance and injustice. It was not social and political situations that had to be brought into line with legal and political norms: on the contrary, the latter must be brought into line with the situation prevailing in the international community. It was therefore essential to improve the international atmosphere, or even the most perfect law would remain a dead letter. The Special Committee should consider the basic reasons behind the failure to implement the principle of the non-use of force, namely the arms race and underdevelopment.

16. As far as the peaceful settlement of disputes was concerned, his delegation had expressed its views in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (A/AC.182/WG.7/Rev.1). With regard to the draft World Treaty submitted by the Soviet Union (A/AC.193/L.3), it was important to make clear that it was the unlawful use of force that was forbidden. The legitimate use of force to maintain peace and order, as provided for in Article 51 and Chapter VII of the United Nations Charter, would always be necessary. The principle of the legitimate use of force had also been recognized in many treaties and conventions, particularly multilateral and bilateral mutual defence agreements. Article III of the Soviet draft was therefore indispensable. The principle of "pacta sunt servanda" constituted the backbone of international law and was much more important than the principle of the non-use of force.

17. Some representatives had referred to the question of treaties concluded under the threat of force and treaties that were inconsistent with a basic norm of general international law, namely "jus cogens". Those questions had already been discussed at length within the United Nations system and had been settled in the Vienna Convention on the Law of Treaties. There was therefore no need to reconsider them. The Special Committee should concentrate on establishing criteria for distinguishing legitimate from illegitimate uses of force. His delegation would support all proposals designed to enhance the effectiveness of the principle of the non-use of unlawful force in international relations and the principle of the peaceful settlement of international disputes, provided that such proposals were realistic and enjoyed the support of a majority of the members of the Committee.

18. Mr. WANI (Uganda) said that when his country had entered the community of nations it had been impelled by a desire for international peace and security, and that desire continued to motivate its actions in the United Nations, the Organization of African Unity and the Group of Non-Aligned Countries. Uganda had adhered strictly

(Mr. Wani, Uganda)

to its obligations under the Charter of the United Nations but was disappointed to note that, although almost all countries condemned the use of force, practically every region of the world suffered as a result of acts of aggression and wars by proxy. For those who encouraged such wars, the suffering of third-world countries was a blessing. His country condemned such attitudes and believed that success in finding a solution to the problem of the use of force depended on whether States displayed the necessary political will and mutual respect. As long as States haboured expansionist designs and pursued a policy of world-wide nationalism, lasting peace would be impossible, since each nation must decide what was best for itself.

19. The division of the world into spheres of influence was a further cause for serious concern and had been responsible for many conflicts. His country attached great importance to the liberation of peoples from foreign domination and gave its unreserved support to peoples living under colonial rule. As long as apartheid, racism, racial discrimination and foreign domination continued to exist in southern Africa and elsewhere, a lasting peace would be impossible, since the legitimate struggle for liberation would be intensified. His delegation wished to reaffirm its commitment to seeking a peaceful solution to the question of the non-use of force and welcomed the timely initiative taken by the Soviet Union. The draft Treaty submitted by the Soviet Union had been subjected to various criticisms, but it would be wrong to judge the issue prematurely or to abandon the search for a lasting solution.

20. Mr. ROSSIDES (Cyprus) said that the international community owed a debt of gratitude to the Soviet Union for focusing its attention on the most important part of the Charter of the United Nations. The prevention of the use of force in international relations was after all the raison d'être of the United Nations. The Charter was an extremely well-drafted document in that it clearly established the close links between the concept of the peaceful settlement of disputes, the principle of the non-use of force in international relations and the need for effective machinery to enforce that principle (Article 2, paras. 3-5). However, the provisions of the Charter had been ignored and the decisions of the Security Council had not been enforced. Nations were therefore able to commit acts of aggression with impunity, and many feared for the survival of mankind. Such a situation was intolerable.

21. It was difficult to see how a new international economic order could be established when there was no legal order conducive to international security. Moreover, the financial resources for the establishment of a new international economic order were lacking, since billions of dollars were being diverted towards arms. There appeared to be feverish preparations for a major war and a continued adherence to the principles of force and domination. The world had become polarized, and the concept of the balance of power had been replaced by that of the balance of weapons, with a resultant escalation of the arms race. The Special Committee had a vital role to play in attempting to halt that process, which could lead only to mass destruction.

(Mr. Rossides, Cyprus)

22. Many problems connected with development and the establishment of a new international economic order arose from the violation of Charter provisions regarding the enforcement of measures adopted by the Security Council. That situation was sure to have serious consequences. A treaty on the non-use of force, in addition to being a conscious reaffirmation of the prohibition of the use of force, could provide for effective action to ensure the implementation of Security Council resolutions. The question had been raised as to how the Security Council could properly adjudicate cases of aggression when aggression had not been defined in the Charter. The world community did, however, have a definition of aggression, which was to be found in General Assembly resolution 3314 (XXIX). The Security Council could adopt the required measures in cases of aggression, but, again, it was imperative that its resolutions should be implemented. His delegation was encouraged to note that in recent years that imperative had been clearly reflected in the introduction to the report of the Secretary-General on the work of the Organization. Another encouraging development was the study on the relationship between disarmament and development undertaken pursuant to General Assembly resolution 32/88.

23. Statements made by the representatives of Poland, the Union of Soviet Socialist Republics, India, Iraq, the United Kingdom and Italy suggested that the Eastern European States, the non-aligned States and the Western European and other States acknowledged that the provisions of Article 2, paragraphs 3, 4 and 5, of the Charter had not always been adequately respected and that they recognized the need for greater effectiveness of Security Council resolutions, for enforcement action to deter aggression and for enforcement of the prohibition of the use of force, rather than a mere reaffirmation of that prohibition. Cyprus believed that a treaty on the non-use of force should make specific provision for the more effective enforcement of the prohibition and develop the procedures for the peaceful settlement of disputes, since such procedures were not included in Chapter VI of the Charter.

24. It was important that the various criticisms of the draft World Treaty on the Non-Use of Force in International Relations (A/AC.193/L.3) should be turned into positive contributions. Delegations which had complained about specific points in the draft should produce concrete proposals for its improvement. For its part, his delegation would suggest that a fourth paragraph should be added to Article I to state that violations of obligations assumed under the Treaty would entail enforcement measures provided for in Chapter VII of the Charter.

25. The situation in Cyprus offered a unique example of the non-implementation of resolutions, namely, General Assembly resolution 3212 (XXIX) and Security Council resolution 365 (1974). Never before had unanimously adopted resolutions remained unimplemented in such an astonishing way. The Cyprus situation was related to the questions before the Special Committee since it highlighted the unfortunate results of the lack of enforcement measures. Because of the lack of such measures, the two resolutions to which he had just referred had been contemptuously disregarded, the foreign occupation of Cyprus had continued, two thirds of the indigenous population had been expelled, and their homes and property had been usurped by an alien population.

(Mr. Rossides, Cyprus)

26. It was not enough for the Special Committee to engage in legalistic discussions. Efforts should be made to ensure that comments and criticisms resulted in constructive proposals and positive action. The world was witnessing an unprecedented spectacle of insecurity, anarchy and strained relations at all levels. The future of mankind looked grim; time was of the essence if world destruction was to be averted.

The meeting rose at 12.50 p.m.